

CANADA

(Class Action)  
SUPERIOR COURT

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

**S. MORAND**

NO: 500-06-001345-244

*Applicant*

-vs.-

**AEROPLAN INC.**, legal person duly incorporated, having its head office located at 7373 Boulevard Côte Vertu Ouest, Saint-Laurent, Québec H4S 1Z3

and

**CANADIAN IMPERIAL BANK OF COMMERCE**, legal person duly incorporated, having its principal establishment at CIBC Square, 81 Bay Street, Toronto, ON M5J 0E7

and

**TORONTO-DOMINION BANK**, legal person duly incorporated, having its principal establishment at 66 Wellington Street – 15<sup>th</sup> Floor (Legal Department), Toronto, ON, M5K 1A2

*Defendants*

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION & TO  
APPOINT THE APPLICANT AS REPRESENTATIVE PLAINTIFF**  
(Art. 574 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:



## **I. GENERAL PRESENTATION**

### **A) The Action**

1. The Applicant wishes to institute a class action on behalf of the following class, of which she is a member, namely:
  - All persons resident in Quebec who are holders of a CIBC or TD Aeroplan credit card and who had Welcome Bonus Points clawed back based on having been issued a second Aeroplan credit card;
2. This is an action in extracontractual liability, contractual liability, unjust enrichment, consumer protection law, and competition law pertaining to Aeroplan Visa credit card agreements entered into between Class Members and Aeroplan Inc. (“Aeroplan”) and Toronto Dominion Bank (“TD”) and between Class Members and Aeroplan and Canadian Imperial Bank of Commerce (“CIBC”), respectively;
3. The Aeroplan program is a loyalty rewards and recognition program operated by Aeroplan that allows members to accumulate Aeroplan points by purchasing products and services from participating retailers and suppliers. The points can be redeemed for various travel, gift card, merchandise and other rewards provided directly by said retailers and suppliers or via Aeroplan’s intermediary suppliers. Aeroplan, TD, and CIBC entice individuals to sign up for Aeroplan Visa credit cards by, among other things, offering Welcome Bonus Points automatically given to persons who qualify for the relevant credit card;
4. In October 2024, Aeroplan notified the Applicant and at least 17,000 other Class Members that Welcome Bonus Points given to them upon signing up for a second Aeroplan credit card with TD or CIBC were being rescinded or clawed back;
5. However, Defendants TD and CIBC signed up the Applicant and Class Members to Aeroplan credit cards without ever notifying them that they may not be eligible for Welcome Bonus Points despite collecting their Aeroplan account numbers as part of the application process. Aeroplan did not, moreover, take any steps to notify or otherwise inform TD or CIBC or new cardholders that they were not eligible for Welcome Bonus Points at the time of application, or at anytime thereafter, prior to suddenly and unilaterally rescinding or clawing back the Welcome Bonus Points given to Applicant and Class Members;
6. As a result of TD, CIBC, and Aeroplan’s scheme, the Applicant and Class Members signed up for credit cards, incurred expenditures, and paid annual fees they would not have if they had been made aware that they were not eligible for Welcome Bonus Points on their second Aeroplan credit cards. As well, TD and CIBC collected merchant interchange fees, annual fees, interest, and other fees due to the Applicant and Class Members having signed up for Aeroplan credit cards, and Aeroplan collected some of those fees from TD and CIBC;

7. Applicant and Class Members incurred monetary loss in the amount of annual credit card fees charged by TD and CIBC in relation to their second Aeroplan Visa credit card, as well as in the form of at least 10,000 Welcome Bonus Points – which have a monetary value of \$200;
8. The significant legally-cognizable injuries suffered by Applicant and Class Members are the direct and immediate result of the Defendants' faults and otherwise unlawful conduct;
9. The Defendants are therefore solidary liable and/or liable *in solidum*<sup>1</sup> to compensate the Applicant and Class Members for injuries they respectively incurred;
10. The remedies sought are not limited to the payment of money in the form of compensatory and punitive damages, restitution, or disgorgement of profits, but further extend to:
  - (a) injunctive relief enjoining Aeroplan to restore to the Applicant and Class Members the rescinded Welcome Bonus Points;
  - (b) implementing measures to instantly become apprised of any new application for Aeroplan credit cards via TD and CIBC; and
  - (c) TD and CIBC verifying and informing prospective Aeroplan credit card applicants whether they are eligible for Welcome Bonus Points at the application stage;
11. As particularized in the present Application for Authorization, Defendants' TD and CIBC's liability is based on:
  - (1) negligence;
  - (2) contractual faults arising from breaches of the duty to inform flowing from the obligation of good faith applying at the contract formation stage;
  - (3) violations of the *Consumer Protection Act*, R.S.Q. c. P-40;
  - (4) violations of the *Competition Act*, R.S.C., 1985, c. c-34; and
  - (5) unjust enrichment;
12. Also particularized in the present Application for Authorization, Defendant Aeroplan's liability is based on:

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<sup>1</sup> See e.g., *Montréal (Ville) v. Lonardi*, [2018 SCC 29](#), at para. 85, citing *Gilles E. Néron Communication Marketing Inc. v. Chambre des notaires du Québec*, [2004 SCC 53](#), at para. 79.

- (1) negligence;
- (2) contractual faults arising from breaches of the duty to inform flowing from the obligation of good faith applying at the contract formation stage;
- (3) contractual faults flowing from the unilateral, excessive, unreasonable, arbitrary and injurious exercise of contractual discretion, contrary to the obligation of good faith applying at the contract performance stage; and
- (4) unjust enrichment.

## B) The Defendants

13. Defendants TD and CIBC are both federally incorporated banks with their headquarters and principal place of business situated in Toronto, Ontario. At all relevant times, TD and CIBC carried on business in Quebec and across Canada, offering a variety of financial and credit services, including retail banking and consumer credit cards such as TD and CIBC Aeroplan Visa credit cards, respectively;
14. Defendant Aeroplan is a federally incorporated company with a head office located in Montreal, Quebec. At all relevant times, Aeroplan carried on business in Quebec and across Canada as a provider of the Aeroplan program having entered into partnerships with Defendants TD and CIBC for Aeroplan credit card services, as well as non-Defendant American Express.
15. As appears in an extract from the *Registraire des entreprises du Québec* attached herein as **Exhibit R-1**, Defendant Aeroplan is a wholly-owned subsidiary of Air Canada;

## C) The Situation

### i. The Aeroplan Program

16. Defendant Aeroplan operates the Aeroplan program, a consumer loyalty rewards and recognition program that involves allowing Aeroplan account holders to accumulate Aeroplan points by purchasing goods and services from participating retailers and suppliers with whom Aeroplan has partnered;
17. Aeroplan points can be redeemed for various travel, gift card, merchandise and other rewards provided directly by said retailers and suppliers or via Aeroplan's intermediary suppliers. Aeroplan points can notably be redeemed to obtain airplane tickets and air travel-related perks and services offered by Air Canada;
18. Aeroplan has partnered with TD and CIBC to offer, respectively, TD Aeroplan Visa and CIBC Aeroplan Visa credit cards, respectively. To entice individuals to sign up for said Aeroplan Visa credit cards, Aeroplan, TD and CIBC offer Welcome

Bonus Points that are automatically given to persons who qualify for the relevant Aeroplan credit card. Individuals can sign up for more than one Aeroplan Visa credit card (e.g., a TD Aeroplan Visa credit card and a CIBC Aeroplan Visa credit card);<sup>2</sup>

ii. Application Process for Aeroplan Visa Credit Cards

19. Individuals may apply for Aeroplan Visa credit cards online or in person;
20. As appears in extracts from TD and CIBC's respective websites for Aeroplan credit cards, attached herein *en liasse* as **Exhibit R-2**, the online application forms to apply for a TD Aeroplan Visa credit card or CIBC Aeroplan Visa credit card expressly invite applicants to enter their existing Aeroplan number;
21. Defendants TD and CIBC do this – presumably at the direction or on behalf of Defendant Aeroplan – for the express purpose of ensuring that applicants whose applications are successful will have any new Aeroplan points awarded or earned in relation to their new (second) Aeroplan Visa credit card added to their existing Aeroplan account and combined with Aeroplan points awarded or earned in relation to their other (first) Aeroplan Visa credit card. Welcome Bonus Points advertised as being available to all persons qualifying for a TD or CIBC Aeroplan Visa credit card are therefore added to existing Aeroplan accounts when a person qualifies for a second TD or CIBC Aeroplan Visa credit card;
22. Despite collecting the existing Aeroplan account numbers of applicants applying for a second Aeroplan Visa credit card, neither TD nor CIBC have mechanisms for automatically or otherwise instantly verifying whether applicants are ineligible for Welcome Bonus Points due to already holding a CIBC or TD Aeroplan credit card;
23. As a result, TD and CIBC never inform holders of existing Aeroplan accounts who apply for a second Aeroplan Visa credit card that they are or may be ineligible for Welcome Bonus Points advertised as being automatically given to any individual who qualifies for a TD or CIBC Aeroplan Visa credit card;
24. Nor does Aeroplan provide any such notification, whether at the time the existing Aeroplan account holder applies for a second TD or CIBC Aeroplan Visa credit card, at the time the application is successful, at the time the second Aeroplan Visa credit card is issued, or otherwise;
25. Despite TD and CIBC collecting existing Aeroplan account numbers and linking them to the new credit cards, Aeroplan has not implemented an instant verification process or mechanism that would instantly or otherwise temporally proximately notify TD or CIBC and/or the existing Aeroplan account holder that they are not

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<sup>2</sup> Note that Aeroplan has also partnered with American Express for American Express Aeroplan credit cards in Canada and JP Morgan Chase & Co. for Chase Aeroplan credit cards in the United States, but Welcome Bonus Points do not appear to have been clawed back from their cardholders.

eligible for Welcome Bonus Points upon qualifying for a second TD or CIBC Aeroplan Visa credit card;

26. As the direct and immediate result of signing up existing Aeroplan account holders to second TD or CIBC Aeroplan Visa credit cards, TD and CIBC respectively profit by way of annual fees, interest, and other fees or charges collected from account holders, in addition to merchant interchange fees;
27. Aeroplan also directly profits from the fees and/or charges collected by TD and CIBC as part of their respective contractual relationships pursuant to which TD and CIBC can offer a variety of Aeroplan Visa credit cards;

iii. Monetary Value of Aeroplan Points

28. As expressly represented by Defendants TD and CIBC on their respective websites advertising and soliciting applications for Aeroplan Visa credit cards – representations that are necessarily authorized by Defendant Aeroplan – Aeroplan points generally, and Welcome Bonus Points specifically, have monetary value;
29. To provide only one example from CIBC’s website (attached as **Exhibit R-3**), the “Welcome Offer” for the CIBC Aeroplan Visa Card is for individuals to “Join and get up to \$200 in value in your first year!” Immediately below this representation is a clickable link entitled “Show more offer details” that opens a drop-down section on the same webpage;
30. The first item that appears in this section is the phrase “Earn 10,000 Aeroplan points!” that links to the representation stating “Join and get up to \$200 value in your first year!” Immediately under this is a further representation stating “Get a total of up to 10,000 Aeroplan points (up to \$200 in travel value)” with an icon that then links to a footnote on the same webpage;
31. The most relevant part of the footnote for the present discussion reads as follows:

The up to \$200 value is based on the total value of: the 10,000 Aeroplan points upon approval of your CIBC Aeroplan Visa Card are redeemed for a flight reward (\$200), based on the majority of current Aeroplan cardholders who receive a value of \$0.02/point or more when redeeming for a flight reward as of November 1, 2023. Redemption calculation is based on actual redemptions made by cardholders between the period of November 8, 2020 to November 1, 2023. Aeroplan points have no cash value but are redeemable under the Aeroplan program for flights and other rewards. The retail value of rewards obtained using Aeroplan points will vary depending on a range of factors including the type of reward issued, details of which may be found on [the Air Canada website](#).



32. Essentially equivalent representations as to the value of Aeroplan points appear on TD's website used to advertise TD Aeroplan Visa credit cards and inviting individuals to apply therefor;
33. Indeed, TD's website features a webpage entitled "TD® Aeroplan® Visa\* Credit Cards in Canada (see **Exhibit R-4**). The advantages, rates, annual fees, Aeroplan Bonus Points, and other information and invitations to apply are provided for 4 Aeroplan credit cards: TD Aeroplan Visa Infinite Card, TD Aeroplan Visa Platinum Credit Card, TD Aeroplan Visa Infinite Privilege Credit Card, and TD Aeroplan Visa Business Card;
34. To provide only one example, representations appearing on this webpage to promote and invite applications for the TD Aeroplan Visa Platinum Credit Card include the following "Earn up to \$500 in value,<sup>#</sup> including up to 200 Aeroplan points<sup>2</sup>";
35. Clicking on the # opens a new window within the webpage whose most relevant parts for the purposes of the present discussion read as follows:

# Offer ends January 6, 2025. The value up to \$500 could be earned in the first year of Account opening and is based on the combined total value of:

- \$124: Annual Fee Rebate for the Primary (\$89), and one Additional Cardholder (\$35) for the first year;
- **\$400: 20,000 Aeroplan points earned based on the following requirements:**
  - **Welcome Bonus of 10,000 Aeroplan Points earned when you make your first purchase with your card**
  - Additional Bonus of 10,000 Aeroplan Points earned when you spend \$1,000 within 90 days of Account opening

Value is based on the majority of current Aeroplan cardholders receiving a value of \$0.02/points or more when redeeming for a flight as of Nov 1, 2023. Redemption calculation is based on actual flight redemptions made by cardholders between the period of Nov 8, 2020 – Nov 1, 2023.

Aeroplan points have no cash value but are redeemable under the Aeroplan program for flights and other rewards. The retail value of rewards obtained using Aeroplan points will vary depending on a range of factors including the type of reward issued, details of which may be found at <https://www.aircanada.com/ca/en/aco/home/aeroplan.html/#/> .  
(emphasis added)



36. As noted above, 20,000 Aeroplan points have a monetary value of \$400. Necessarily then, 10,000 Aeroplan points have a monetary value of \$200;
37. Notwithstanding CIBC, TD, and Aeroplan's representations that "Aeroplan points have no cash value," it is undeniable that Aeroplan points are indeed "redeemable under the Aeroplan program for flights and other rewards" that Aeroplan account holders would otherwise have to spend cash to obtain. In other words, the redemption of Aeroplan points results in account holders spending no or less money with respect to the goods or services for which they are redeemed;
38. In sum, Aeroplan points have monetary value and 10,000 Aeroplan points – the amount of Welcome Bonus Points clawed back for Applicant and numerous Class Members – has a monetary value of \$200;

iv. Clawback of Aeroplan Welcome Bonus Points

39. In October 2024 – and without any advance notice whatsoever – Defendant Aeroplan notified Applicant and an estimated 17,000 other Class Members that Welcome Bonus Points given to them upon signing up for a second Aeroplan credit card with TD or CIBC were being rescinded or clawed back;
40. In some cases, the Welcome Bonus Points were clawed back after a year or more had elapsed since Class Members signed up for a second Aeroplan Visa credit card;
41. Aeroplan sent the following notification email to Class Members:

Thank you for being an Aeroplan Credit Cardholder. As you know, Section 10 of the Aeroplan Terms and Conditions states that Welcome Bonuses along with other bonuses, incentives and accelerators may be offered by Aeroplan and its financial institution partners as an incentive for a Member to become a holder of an Aeroplan Credit Card where that Member is neither currently, nor was previously, a holder of that type of Aeroplan Credit Card, regardless of issuing bank. In addition, the provisions provide that Aeroplan may, in its sole discretion, choose to limit the number of New Card Bonuses (including Welcome Bonuses) that a Member may receive in any period, and describes the remedies available to Aeroplan if a Member violates these terms.

As you have received more than the permitted number of New Card Bonuses for the same type of Aeroplan Credit Card, you are in violation of these provisions. As a gesture of goodwill, we will permit you to retain the additional bonus points earned as a result of the use of your Aeroplan Credit Card but will not permit you to retain the Welcome Bonus of the Aeroplan Credit Card. Accordingly, we have, pursuant to the Aeroplan Terms and





Conditions, revoked the Aeroplan Points received by you in your Account from the excess Welcome Bonuses.

We remind you that as a member of the Aeroplan Program, you are obliged to comply with the Aeroplan Program Terms and Conditions and to maintain your account in good standing. Please review these carefully and ensure that you comply with these Terms and Conditions at all times.

42. As stated in the above email, Aeroplan invoked Section 10 of the Aeroplan Program Terms and Conditions to justify its unilateral, sudden, and unreasonable revocation / clawing back of Welcome Bonus Points from Applicant and Class Members. As appears in **Exhibit R-5**, Section 10 reads as follows:

<b>10. Dispositions relatives aux Bonis Nouvelle Carte</b>	<b>10. New Card Bonus Provisions</b>
<p>Occasionnellement, Aéroplan et les institutions financières émettrices de cartes de crédit comarquées Aéroplan (une « <b>Carte de crédit Aéroplan</b> »), ainsi que leurs sociétés affiliées et partenaires commerciaux respectifs, peuvent offrir une prime ou un boni de Points Aéroplan introductif (un « <b>Boni de bienvenue</b> ») afin d'inciter un Membre à devenir titulaire d'une Carte de crédit Aéroplan, et ils peuvent également offrir une prime ou un boni de Points Aéroplan à un Membre pour activer, utiliser ou conserver leur nouvelle Carte de crédit Aéroplan pendant une période minimale après son émission (le Boni de bienvenue et tous les autres bonis, primes et accélérateurs relatifs à l'acquisition, l'activation, l'utilisation ou la détention d'une <b>nouvelle Carte de crédit Aéroplan</b> collectivement « <b>Boni nouvelle carte</b> »). Le Boni nouvelle carte offert à un Membre afin que celui-ci devienne titulaire d'une Carte de crédit Aéroplan vise à inciter ce Membre à devenir titulaire d'une Carte de crédit Aéroplan lorsqu'il ne détient pas encore, ou ne détenait pas antérieurement, le type de Carte de</p>	<p>From time to time, Aeroplan and the financial institutions that issue Aeroplan co-brand credit cards (an "<b>Aeroplan Credit Card</b>"), together with their respective affiliates and business partners, may offer an introductory incentive or bonus of Aeroplan Points (a "<b>Welcome Bonus</b>") to incentivize a Member to become a holder of an Aeroplan Credit Card; and they may also offer an incentive or bonus of Aeroplan Points for a Member to, activate, use or hold their new Aeroplan Credit Card for a minimum period of time following issuance (the Welcome Bonus and all other bonuses, incentives and accelerators relating to acquisition, activation, use or holding of a new Aeroplan Credit Card, collectively, a "<b>New Card Bonus</b>"). In connection with a New Card Bonus being made available for becoming a holder of an Aeroplan Credit Card, such New Card Bonus is intended as an incentive for a Member to become a holder of an Aeroplan Credit Card where that Member is neither currently, nor was previously, a holder of that type of Aeroplan Credit Card, regardless of</p>

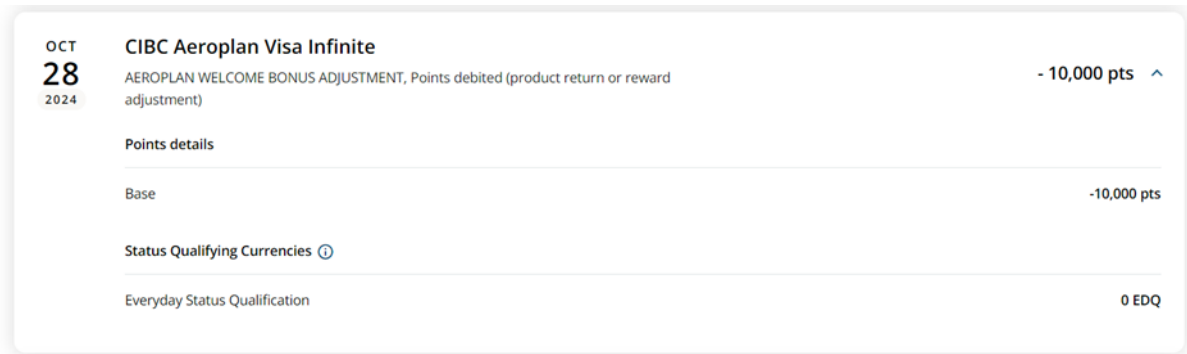


<p>crédit Aéroplan, quel que soit l'émetteur (par exemple, de base, principale, prestige, petite entreprise principale, petite entreprise prestige, ou toute autre carte offrant un niveau d'avantages substantiellement similaires) pour lequel le Boni nouvelle carte est offert. Cela signifie qu'un Membre peut se voir accorder maximum un Bonis nouvelle carte pour chaque type de Carte de crédit Aéroplan dont il devient titulaire, quel que soit l'émetteur.</p> <p>De temps à autre, nous ou les partenaires et fournisseurs participants, pouvons offrir des Points Aéroplan bonis ou en prime pour l'acquisition de produits ou de services (les « <b>Produits et services</b> ») dans le cadre du Programme Aéroplan. Dans le cadre d'une offre de boni ou de prime de Points Aéroplan liée aux Produits et services, le boni ou la prime de Points Aéroplan en question est destiné à un Membre qui n'a pas, précédemment, reçu de boni ou de prime de Points Aéroplan lors de l'obtention de ces mêmes Produits ou services.</p> <p>Aéroplan peut, à sa seule discrétion, décider de limiter le nombre de Bonis nouvelle carte ou de bonis ou de primes similaires qu'un Membre peut recevoir au cours d'une période donnée et, outre les autres recours prévus dans les présentes Conditions générales, se réserve le droit de suspendre, de révoquer ou de résilier le Compte de toute personne qui adopte un comportement d'utilisation excessive, abus ou mauvais usage des offres de Bonis nouvelle carte. Ces comportements comprennent, notamment : i) le fait de demander, de</p>	<p>issuer (e.g., entry, core, premium, core small business, premium small business, or any other card that has a substantially similar level of benefits) for which the New Card Bonus is being offered. This means that a Member may be granted a maximum of one New Card Bonus for each type of Aéroplan Credit Card that the Member becomes a holder of, regardless of issuer.</p> <p>From time to time, bonus or incentive Aéroplan Points may be offered by us or participating partners and suppliers to acquire products or services ("<b>Products and Services</b>") as part of the Aéroplan Program. In connection with bonus or incentive Aéroplan Points being offered as an incentive related to Products and Services, such bonus Aéroplan Points incentives are intended for a Member who has not previously received bonus Aéroplan Points for the same Products or Services, to acquire such Products or Services.</p> <p>Aéroplan may, in its sole discretion, choose to limit the number of New Card Bonuses or similar bonuses or incentives a Member may receive in any period, and, in addition to the other remedies set forth in these Terms and Conditions, reserves the right to suspend, revoke or terminate the Account of any person who engages in a behaviour of excessive use, abuse or misuse of the New Card Bonus offers. Such behaviours include but are not limited to: (i) applying for, transferring or switching (including upgrading or downgrading), or</p>
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<p>transférer ou de substituer (y compris le surclassement ou le déclassement), ou de compléter tout autre changement de produit entre plusieurs Cartes de crédit Aéroplan pour un ou plusieurs types de produits ou auprès d'une ou de plusieurs institutions financières émettrices d'une Carte de crédit Aéroplan; ii) la tendance à annuler ou à se désengager d'une Carte de crédit Aéroplan peu de temps après avoir reçu un Boni nouvelle carte (ou une portion d'un Boni nouvelle carte) ou un boni ou une prime similaire; iii) une tendance à acheter puis à annuler ou à retourner un produit ou service pour lequel des Points Aéroplan ont été émis; et (iv) le fait de lier votre Carte de crédit Aéroplan à un Compte qui n'est pas votre propre Compte.</p>	<p>completing any other product changes between multiple Aeroplan Credit Cards across one or more product types, or across one or more financial institutions that issue an Aeroplan Credit Card; (ii) a pattern of cancelling, or disengaging in, an Aeroplan Credit Card shortly after receiving a New Card Bonus (or any portion of a New Card Bonus) or similar bonus or incentive; (iii) a pattern of purchasing and then cancelling or returning any product or service for which Aeroplan Points were issued; and (iv) linking your Aeroplan Credit Card to an Account that is not your own Account.</p>
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43. As well, notifications of the following kind appeared on Applicant and Class Members' respective Aeroplan accounts:



44. Note that the above identifies the CIBC Aeroplan Visa Infinite but that notifications concerning the "AEROPLAN WELCOME BONUS ADJUSTMENT" also appeared in Class Members' Aeroplan accounts for other types of CIBC or TD credit cards;

v. The Defendants' Liability

(a) TD and CIBC

45. The Defendants' TD and CIBC's liability is based on:

- (1) negligence;

- (2) contractual faults;
  - (3) violations of the *Consumer Protection Act*, R.S.Q. c. P-40;
  - (4) violations of the *Competition Act*, R.S.C., 1985, c. c-34; and
  - (5) unjust enrichment;
- (1) Negligence

46. TD and CIBC's conduct in processing the Applicant and Class Members' applications for a second TD or CIBC Aeroplan Visa credit card, respectively, was negligent within the meaning of art. 1457 C.C.Q.;
47. TD and CIBC failed to abide by the objective standard of a reasonable issuer of Aeroplan Visa credit cards by making representations that were untrue, inaccurate and/or misleading by representing to the Applicant and Class Members that they were eligible for Welcome Bonus Points and omitting or otherwise failing to disclose to the Applicant and Class Members that holders of existing Aeroplan accounts may not be eligible for Welcome Bonus Points for signing up and qualifying for a second TD or CIBC Aeroplan Visa credit card;
48. TD and CIBC knew that these representations were untrue or were reckless or wilfully blind as to their truth. TD and CIBC also intended for the representations to deceive the Applicant and Class Members or knew or were reckless or wilfully blind and that the Applicant and Class Members would rely on the representations in signing up for TD or CIBC Aeroplan Visa credit cards;
49. A reasonable issuer of credit cards featuring a rewards points program would have satisfied their duty to exercise such reasonable care to ensure that the representations made to consumers are accurate and not misleading, including by expressly identifying eligibility requirements in advertising, marketing, instructional, and other materials disseminated to the public;
50. Further, TD and CIBC were respectively negligent in failing to have a system, mechanism, or other process in place to instantly verify whether the Applicant and Class Members were eligible for Welcome Bonus Points upon collecting the Applicant and Class Members' Aeroplan account numbers at the time they applied for their second Aeroplan credit cards (or as soon as possible thereafter);
51. A reasonable issuer of Aeroplan Visa credit cards as part of an adherence contract that is also a consumer contract<sup>3</sup> would know or would be presumed to know that existing Aeroplan account holders who apply for a second CIBC or TD Aeroplan Visa credit card are ineligible for Welcome Bonus Points;

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<sup>3</sup> See e.g., *Léger c. Services de voyages Aéroplan inc.*, [2021 QCCQ 12159](#), at paras. 17-18.

52. A reasonable issuer of Aeroplan Visa credit cards who expressly asks existing Aeroplan account holders to provide their account numbers for the purpose of linking the new credit card to the existing account would therefore implement a process or mechanism to verify existing account holders and confirm those Aeroplan account holders are ineligible for Welcome Bonus Points;
53. A reasonable issuer of Aeroplan Visa credit cards would know or is presumed to know that the failure to verify existing Aeroplan account holders' eligibility for Welcome Bonus Points on their second TD or CIBC Aeroplan Visa credit card would prevent them from informing account holders of their ineligibility and would lead account holders to pay annual and other fees for a new credit card they were led to believe and expect would entitle them to Welcome Bonus Points;
54. TD and CIBC's respective failures to abide by the standard of reasonable care to be observed by a reasonable issuer of Aeroplan Visa credit cards were the direct and immediate result of significant legally-cognizable monetary (pecuniary) injury in the form of annual fees, interest, and other fees and charges charged by TD and CIBC, respectively, and of Aeroplan's unilateral and arbitrary clawing back of at least 10,000 Welcome Bonus Points worth \$200;
55. TD and CIBC are therefore legally required to compensate the Applicant and Class Members;

(2) Contractual Faults

56. TD and CIBC respectively committed contractual faults by failing to inform or otherwise disclose to the Applicant and Class Members that existing Aeroplan account holders who already hold a TD or CIBC Aeroplan Visa credit card are ineligible for Welcome Bonus Points offered to individuals who qualify and are issued a TD or CIBC Aeroplan Visa credit card;
57. It is trite law that a general obligation of good faith applies at the stages of contract formation, performance and termination under arts. 6, 7, and 1375 C.C.Q. These articles provide as follows:

<b>6.</b> Toute personne est tenue d'exercer ses droits civils selon les exigences de la bonne foi.	<b>6.</b> Every person is bound to exercise his civil rights in accordance with the requirements of good faith.
<b>7.</b> Aucun droit ne peut être exercé en vue de nuire à autrui ou d'une manière excessive et déraisonnable, allant ainsi à l'encontre des exigences de la bonne foi.	<b>7.</b> No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner, and therefore contrary to the requirements of good faith.
<b>1375.</b> La bonne foi doit gouverner la conduite des parties, tant au moment de la naissance de l'obligation qu'à	<b>1375.</b> The parties shall conduct themselves in good faith both at the

celui de son exécution ou de son extinction.	time the obligation arises and at the time it is performed or extinguished.
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58. In the present case, the Applicant alleges Defendants TD and CIBC breached the obligation of good faith at the contract formation phase by failing to inform Applicant and Class Members prior to – or at the time of – signing up for a second TD or CIBC Aeroplan Visa credit card that they were not eligible for Welcome Bonus Points upon qualifying for such credit card. It is trite law that the duty to inform is a critical component of the contractual obligation of good faith and that this duty applies at the contract formation phase;<sup>4</sup>
59. The Applicant and Class Members suffered legally-cognizable compensable monetary injuries as a direct and immediate result of TD and CIBC’s respective breaches of the obligation of contractual good faith;
60. In particular, the Applicant and Class Members incurred economic injury in the form of the annual fees charged by TD and CIBC in relation to their second Aeroplan Visa credit cards;
61. These economic injuries would not have been incurred by the Applicant and Class Members if Defendants had not breached their duty of contractual good faith at the contract formation stage by failing to fulfill their duty to inform Applicant and Class Members that they were not eligible for Welcome Bonus Points. Had Aeroplan acted in good faith, the Applicant and Class Members would not have entered into a consumer contract for a second Aeroplan Visa credit card with TD or CIBC;
62. The economic (pecuniary) injuries suffered by Applicant and Class Members are the direct and immediate result of TD or CIBC’s contractual faults. As a result, Defendants TD and CIBC are liable to compensate the Applicant and Class Members to the extent of said pecuniary injuries;

(3) *Violations of the Consumer Protection Act*

63. Defendants TD and CIBC violated the *Consumer Protection Act* (“CPA”) by making false and/or misleading representations in the form of both positive representations and omissions. TD and CIBC omitted or otherwise failed to disclose to the Applicant and Class Members prior to accepting their application for a second Aeroplan Visa credit card that Aeroplan credit card applicants who already hold a TD or CIBC Aeroplan Visa credit card are ineligible to receive Welcome Bonus Points for the second credit card;
64. The contracts respectively entered into between individual Class Members and TD or CIBC and Aeroplan and pursuant to which the Applicant and Class Members were issued a second Aeroplan Visa credit card and Welcome Bonus Points are

<sup>4</sup> See e.g., *Desjardins Financial Services Firm Inc. v. Asselin*, [2020 SCC 30](#).

adhesion contracts (art. 1379 C.C.Q.) and consumer contracts (art. 1384 C.C.Q.) governed by the CPA (art. 2);<sup>5</sup>

65. At all times relevant to this action, the Applicant and Class Members were “consumer[s]” within the meaning of that term as defined in para. 1(e) of the CPA;
66. At all times relevant to this action, Defendants TD and CIBC were “merchant[s]” and “advertisers” as defined in art. 1 of the CPA;
67. The statements, affirmations, and omissions in advertising, marketing, and/or other materials prepared, authored, circulated, published by the Defendants for the purpose of – or otherwise connected to – promoting, enticing, inviting, initiating, receiving, and processing applications for TD or CIBC Aeroplan Visa credit cards fall within the definition of “representation” codified in arts. 216 and 219 of the CPA;<sup>6</sup>
68. The definition of “representation” in art. 216 *et seq.* of the CPA is as follows:

<b>TITRE II</b> PRATIQUES DE COMMERCE	<b>TITLE II</b> BUSINESS PRACTICES
<b>216.</b> Aux fins du présent titre, une représentation comprend une affirmation, un comportement ou une omission.	<b>216.</b> For the purposes of this title, representation includes an affirmation, a behaviour or an omission.
<b>217.</b> La commission d'une pratique interdite n'est pas subordonnée à la conclusion d'un contrat.	<b>217.</b> The fact that a prohibited practice has been used is not subordinate to whether or not a contract has been made.

69. As art. 216 CPA makes clear, the “representations” encompassed within CPA are not limited to affirmations but also extend to omissions, which necessarily extend to the failure to disclose of a merchant and/or advertiser to disclose information that a reasonable consumer would consider material in respect of consumer goods and/or services;
70. As noted, the misrepresentations at issue in the present class action concern the Defendants TD and CIBC’s repeated, deliberate, intentional, continuous, flagrant, ongoing omissions and failure to disclose that Aeroplan credit card applicants who already hold a TD or CIBC Aeroplan credit card may be ineligible to receive Welcome Bonus Points upon signing up for a second Aeroplan credit card;

<sup>5</sup> See e.g., *Léger c. Services de voyages Aéroplan inc.*, [2021 QCCQ 12159](#), at paras. 17-18, 28-35.

<sup>6</sup> See e.g., *Léger c. Services de voyages Aéroplan inc.*, [2021 QCCQ 12159](#), at paras. 28-35.

71. The abovementioned active and passive misrepresentations by omission constitute “prohibited practice[s]” within the meaning of Title II of the CPA;
72. First, art. 228 of the CPA provides that “[n]o merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer”;
73. Second, art. 219 of the CPA prohibits merchants, manufacturers and advertised from making “false or misleading representations to a consumer... by any means whatever”;
74. Third, art. 220 of the CPA prohibits merchants, manufacturers and advertised from “falsely, by means whatever,” do any of the following (among others):
  - (a) ascribe certain special advantages to goods or services;
  - (b) hold out that the acquisition or use of goods will result in pecuniary benefit;
  - (c) hold out that the acquisition or use of goods or services confers or insures rights, recourses or obligations.
75. As to (a), Defendants TD and CIBC ascribed the special advantage of Welcome Bonus Points to all Aeroplan Visa credit cards to be acquired by any person despite knowing or being negligent or wilfully blind as to Welcome Bonus Points not being available to existing Aeroplan account holders applying for a second TD or CIBC Aeroplan Visa credit card;
76. As to (b), Defendants TD and CIBC held out that the acquisition of any TD or CIBC Aeroplan Visa credit card by anyone would result in the pecuniary benefit of Welcome Bonus Points, with 10,000 bonus points having a monetary value of \$200 CDN (see Exhibit R-1);
77. As to (c), Defendants TD and CIBC held out that the acquisition of any TD or CIBC Aeroplan Visa credit card by anyone would confers and/or insure the right to be given and subsequently use Welcome Bonus Points;
78. Fourth, TD and CIBC have contravened art. 223.1 of the CPA, which provides that “[a] merchant, manufacturer or advertiser must, in an advertisement concerning goods or services, present the information in a clear, legible and understandable manner, and as prescribed by regulation”

(4) *Violations of the Competition Act*

79. The Defendants TD and CIBC violated section 52(1) of the *Competition Act* by making false and/or misleading representations in the form of both positive representations and omissions;





80. Section 52(1) of the *Competition Act* provides as follows:

<p><b>Indications fausses ou trompeuses</b>  <b>52 (1)</b> Nul ne peut, de quelque manière que ce soit, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'utilisation d'un produit, soit des intérêts commerciaux quelconques, donner au public, sciemment ou sans se soucier des conséquences, des indications fausses ou trompeuses sur un point important.</p>	<p><b>False or misleading representations</b>  <b>52 (1)</b> No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.</p>
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81. Importantly, para. 52(1.1)(a) of the *Competition Act* provides as follows:

<p><b>Preuve non nécessaire</b>  <b>(1.1)</b> Il est entendu qu'il n'est pas nécessaire, afin d'établir qu'il y a eu infraction au paragraphe (1), de prouver :</p> <p><b>a)</b> qu'une personne a été trompée ou induite en erreur;</p>	<p><b>Proof of certain matters not required</b>  <b>(1.1)</b> For greater certainty, in establishing that subsection (1) was contravened, it is not necessary to prove that</p> <p><b>(a)</b> any person was deceived or misled;</p>
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82. Representations are also defined under para. 52(2)(e) of the *Competition Act* as including those "contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public ... "

83. This provision applies to misrepresentations made by the Defendants and included on, *inter alia*, the various websites and webpages used by TD and CIBC to promote Aeroplan Visa credit cards and solicit and process applications, and any other document, video, or other media accessible on said websites, webpages, and Application and that pertain to the Aeroplan Visa credit cards at issue in the present class action;

84. Paragraph 36(1)(a) of the *Competition Act* provides for the remedy of recovery of damages to "Any person who has suffered loss or damage as a result of (a) conduct that is contrary to any provision of Part VI..." Section 52 is a provision contained in Part VI;

85. Paragraph 36 identifies the damages that may be recovered by a person referred to in paragraph (a) as follows:

<p><b>Recovery of damages</b></p>	<p><b>Recouvrement de dommages-intérêts</b></p>
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<p><b>36 (1)</b> Any person who has suffered loss or damage as a result of</p> <p><b>(a)</b> conduct that is contrary to any provision of Part VI, [...]</p> <p>may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.</p>	<p><b>36 (1)</b> Toute personne qui a subi une perte ou des dommages par suite :</p> <p><b>a)</b> soit d'un comportement allant à l'encontre d'une disposition de la partie VI;</p> <p>peut, devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.</p>
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86. In sum, the Applicant and Class Members are entitled to damages and the costs of investigation of their losses pursuant to s. 36(1) of the *Competition Act* for the Defendants TD and CIBC's respective violations of s. 52(1) thereof;

(4) Unjust Enrichment

87. TD and CIBC respectively unjustly enriched themselves at the expense of the Applicant and Class Members within the meaning of arts. 1493 and 1494 C.C.Q.;

88. Articles 1493 and 1494 C.C.Q. read as follows:

<p><b>SECTION III</b> DE L'ENRICHISSEMENT INJUSTIFIÉ</p>	<p><b>DIVISION III</b> UNJUST ENRICHMENT</p>
<p><b>1493.</b> Celui qui s'enrichit aux dépens d'autrui doit, jusqu'à concurrence de son enrichissement, indemniser ce dernier de son appauvrissement corrélatif s'il n'existe aucune justification à l'enrichissement ou à l'appauvrissement.</p> <p><b>1494.</b> Il y a justification à l'enrichissement ou à l'appauvrissement lorsqu'il résulte de l'exécution d'une obligation, du défaut,</p>	<p><b>1493.</b> A person who is enriched at the expense of another shall, to the extent of his enrichment, indemnify the other for the latter's correlative impoverishment, if there is no justification for the enrichment or the impoverishment.</p> <p><b>1494.</b> Enrichment or impoverishment is justified where it results from the performance of an obligation, from the failure of the person impoverished to</p>

<p>par l'appauvri, d'exercer un droit qu'il peut ou aurait pu faire valoir contre l'enrichi ou d'un acte accompli par l'appauvri dans son intérêt personnel et exclusif ou à ses risques et périls ou, encore, dans une intention libérale constante.</p>	<p>exercise a right of which he may avail himself or could have availed himself against the person enriched, or from an act performed by the person impoverished for his personal and exclusive interest or at his own risk and peril, or with a consistent liberal intention.</p>
<p><b>1495.</b> L'indemnité n'est due que si l'enrichissement subsiste au jour de la demande.</p>	<p><b>1495.</b> The indemnity is due only if the enrichment continues to exist on the day of the demand.</p>
<p>Tant l'enrichissement que l'appauvrissement s'apprécie au jour de la demande; toutefois, si les circonstances indiquent la mauvaise foi de l'enrichi, l'enrichissement peut s'apprécier au temps où il en a bénéficié.</p>	<p>Both the enrichment and the impoverishment are assessed on the day of the demand; however, where the circumstances indicate the bad faith of the person enriched, the enrichment may be assessed as at the time he benefited therefrom.</p>

89. The elements of unjust enrichment under art. 1493 and 1494 C.C.Q. are satisfied as concerns Defendants TD and CIBC's conduct and its impact on the Applicant and Class Members. To wit:

- TD and CIBC enriched themselves by enticing the Applicant and Class Members to sign up for second Aeroplan Visa credit cards, and by collecting merchant interchange fees, annual fees, interest, and other fees associated with the use of said credit cards;
- The Applicant and Class Members were correlatively deprived and impoverished in amounts corresponding to the annual credit card fees charged to the Applicant and Class Members by TD and CIBC in relation to their second Aeroplan Visa credit card;
- As the enrichment arose from TD and CIBC's violations of the *Consumer Protection Act* and the *Competition Act*, and arises from conduct characterized as negligent under art. 1457 C.C.Q. and in the absence of any legal justification or authority for the enrichment, there was no juristic reason for the Defendants enriching themselves at Class Members' expense, or for Class Members' impoverishment;
- TD and CIBC's respective enrichment continues on the day of the present Application;

90. TD and CIBC are therefore legally liable to pay restitution to the Applicant and Class Members in an amount corresponding to their respective enrichment;

(b) Aeroplan Inc.

91. The Applicant alleges that Defendant Aeroplan's liability arises from its commission of: (i) extracontractual and (ii) contractual faults, and well as (iii) unjust enrichment

i) Extracontractual Liability

92. Aeroplan's conduct in processing the Applicant and Class Members' applications for a second TD or CIBC Aeroplan Visa credit card, respectively, was negligent within the meaning of art. 1457 C.C.Q.;

93. Aeroplan was negligent in failing to verify whether Aeroplan account holders who applied for a second Aeroplan credit card with TD or CIBC were eligible for Welcome Bonus Points and/or in failing to have a system or mechanism in place to ensure that TD and CIBC are apprised that applicants for a second Aeroplan credit card are ineligible for Welcome Bonus Points from the moment they collect applicants' Aeroplan account numbers and thus prior to applicants' finalizing the application for their second Aeroplan Visa credit card;

94. A reasonable owner and administrator of a loyalty rewards program that has partnered with financial institutions for the issuance of credit cards through which holders accrue rewards points, would have implemented a system, mechanism or other process to verify whether existing account holders are eligible to receive Welcome Bonus Points that are presumptively given to all new credit card holders but that excludes account holders who have applied for their second credit card;

95. Aeroplan deliberately intended and authorized TD and CIBC to ask existing Aeroplan account holders to provide their Aeroplan account numbers as part of the process applying for a second TD or CIBC Aeroplan credit card. Aeroplan therefore directly knew that existing account holders would apply for more than one TD or CIBC Aeroplan credit card;

96. Aeroplan also knew that Aeroplan account holders – like the Applicant and Class Members – are ineligible to receive Welcome Bonus Points upon being issued a second TD or CIBC Aeroplan credit card, that said account holders would be enticed to sign up for a second such credit card based on the prospect of receiving Welcome Bonus Points, and that the account holders would pay annual fees, interest and other fees and charges in relation to their second Aeroplan credit card;

97. Aeroplan failed to abide by the standard of a reasonable owner, administrator, and partner in a rewards loyalty program associated with a consumer credit card by not taking measures to instantly communicate to TD and CIBC that Applicant and

Class Members provided their existing Aeroplan account as part of the application process for their second Aeroplan Visa credit card;

98. Aeroplan's negligent conduct was the direct and immediate cause of significant legally cognizable compensable monetary (pecuniary) injuries;
99. The pecuniary injury corresponds to the amount of annual credit card fees charged to the Applicant and Class Members by TD and CIBC in relation to their second Aeroplan Visa credit card, as well as 10,000 or more Aeroplan points clawed back by Aeroplan, which have a monetary value of \$200;
100. These are pecuniary injuries that the Applicant and Class Members would not have incurred if they had been informed that they were not eligible for Welcome Bonus Points – and if proper measures had been in place to so inform them – as they would not have signed up for their second TD or CIBC Aeroplan Visa credit card;
101. Aeroplan is therefore legally required to compensate the Applicant and Class Members;

ii) Contractual Liability

102. Defendant Aeroplan Inc.'s contractual liability is based on its failure to abide by the duty of good faith it was and remains bound to fulfill at the formation and performance stages of the contracts entered into with Applicant and Class Members;
103. The contracts respectively entered into between Class Members and Aeroplan with respect to the Aeroplan Program are contracts of adhesion under art. 1379 C.C.Q. and consumer contracts under art. 1384 C.C.Q.;<sup>7</sup>
104. As noted, it is trite law that a general obligation of good faith applies at the stages of contract formation, performance and termination under arts. 6, 7, and 1375 C.C.Q.;
105. In the present case, the Applicant alleges that Defendant Aeroplan breached the obligation of good faith at the contract formation phase by failing to inform Applicant and Class Members at the time of signing up for a second TD or CIBC Aeroplan Visa credit card that they were not eligible for Welcome Bonus Points upon qualifying for such credit card. As also noted, it is trite law that the duty to inform is a critical component of the contractual obligation of good faith and that this duty applies at the contract formation phase;<sup>8</sup>
106. The Applicant also alleges that Defendant Aeroplan breached its obligation of good faith at the stage of contractual performance by exercising its discretion under the

<sup>7</sup> See e.g., *Léger c. Services de voyages Aéroplan inc.*, [2021 QCCQ 12159](#), at paras. 17-18.

<sup>8</sup> See e.g., *Desjardins Financial Services Firm Inc. v. Asselin*, [2020 SCC 30](#).



Aeroplan Program Terms and Conditions with the intent to injure Applicant and Class Members and/or “in an excessive and unreasonable manner” contrary to arts. 6, 7, and 1375 C.C.Q.;

107. Aeroplan’s exercise of contractual discretion was unreasonable, excessive, arbitrary, and/or intentionally injurious and therefore in bad faith in:
- Choosing to apply Section 10 randomly, at any time, up to two years after the relevant time period (i.e. after an Aeroplan account holder qualifies for their second Aeroplan Visa credit card);
  - Choosing to apply Section 10 exclusively to Welcome Bonus Points, but not to any other Aeroplan incentives or bonus points (such as Additional Bonus Points and Anniversary Bonus Points);
  - Choosing to apply it to TD and CIBC Aeroplan credit cards but not to Amex or Chase Aeroplan credit cards;
108. Further, Aeroplan’s exercise of contractual discretion under Section 10 of Aeroplan Terms and Conditions – part of an adhesion and consumer contract<sup>9</sup> – is contrary to the obligation of contractual good faith for being unreasonable and/or excessive in frustrating the expectations and reliance it cultivated in the Applicant and Class Members that they were in fact eligible and entitled for the Welcome Bonus Points that were ultimately rescinded and clawed back;
109. Aeroplan cultivated those expectations by failing to inform the Applicant and Class Members at the contract formation phase of its interpretation of Section 10 as rendering them ineligible for Welcome Bonus Points upon qualifying for a second Aeroplan Visa credit card with TD or CIBC and as purportedly authorizing it to unilaterally claw back the Welcome Bonus Points at any time and without advance warning whatsoever;
110. Aeroplan further cultivated Applicant and Class Members’ reliance and expectations that they were entitled to the Welcome Bonus Points that were eventually clawed back by remaining silent for up to two years – and therefore making representations by omission – as to the Applicant and Class Members not actually being eligible or entitled to the Welcome Bonus Points;
111. The Applicant and Class Members reasonably relied on the expectations and representations cultivated and made by Defendant Aeroplan and had their legal interests detrimentally affected by applying for and accepting a second Aeroplan credit card and using it to make purchases, as well as by paying an annual fee when it became due. As emphasized, the Applicant and Class Members would not have signed up for a second Aeroplan Visa credit card with TD or CIBC had

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<sup>9</sup> See e.g., *Léger c. Services de voyages Aéroplan inc.*, [2021 QCCQ 12159](#), at paras. 17-18.

they been informed that they would not be eligible for the advertised Welcome Bonus;

112. Based on said reliance and expectations, it is contrary to the obligation of good faith for Aeroplan to seek to justify the retroactive, sudden, and unchallengeable clawing back of Welcome Bonus Points;
113. The Applicant and Class Members suffered legally-cognizable compensable monetary injuries as a direct and immediate result of Aeroplan's unilateral, unreasonable, excessive, and unannounced exercise of discretion to claw back the Welcome Bonus;
114. In particular, the Applicant and Class Members incurred economic injury in the form of the annual fees charged by TD and CIBC in relation to their second Aeroplan Visa credit cards;
115. These economic injuries would not have been incurred by the Applicant and Class Members if Aeroplan had not breached their duty of contractual good faith at the contract formation and performance phases by failing to fulfill their duty to inform the Applicant and Class Members that they were not eligible for Welcome Bonus Points. Had Aeroplan acted in good faith, the Applicant and Class Members would not have entered into a consumer contract for a second Aeroplan Visa credit card with TD or CIBC;
116. The Applicant and Class Members also suffered an economic injury in the form of 10,000 Aeroplan points clawed back by Aeroplan as part of its unilateral, unreasonable, excessive, injurious and therefore bad faith exercise of contractual discretion. The 10,000 Aeroplan points have a monetary value of \$200;
117. The economic (pecuniary) injuries suffered by Applicant and Class Members are the direct and immediate result of Aeroplan's contractual faults. As a result, Aeroplan is liable to compensate the Applicant and Class Members to the extent of said pecuniary injuries;

iii) Unjust Enrichment

118. Aeroplan unjustly enriched itself at the expense of the Applicant and Class Members within the meaning of arts. 1493 and 1494 C.C.Q.
119. In particular:
  - Aeroplan enriched itself by collecting from TD and CIBC certain percentages of merchant interchange fees, annual fees, and other amounts of monies generated by the Applicant and Class Members using their second TD or CIBC Aeroplan Visa credit cards to make purchases and other transactions;



- The Applicant and Class Members were correlatively deprived and impoverished in amounts corresponding to the annual credit card fees charged to them by TD and CIBC in relation to their second Aeroplan Visa credit card, as well as 10,000 or more Aeroplan points clawed back by Aeroplan, which have a monetary value of \$200;
- As the enrichment arose from Aeroplan's negligence and bad faith exercise of its contractual discretion – combined with TD and CIBC's respective negligence and violations of the *Consumer Protection Act* and of the *Competition Act* – and in the absence of any legal justification or authority for the enrichment, there was no juristic reason for the Defendants enriching themselves at Class Members' expense or for Class Members' impoverishment.

120. Defendant Aeroplan is therefore legally required to compensate the Applicant and Class Members;

vi. Solidary Liability or Liability *In Solidum*

121. Based on the aforementioned, Defendants Aeroplan and TD, and Aeroplan and CIBC, are solidary liable or liable *in solidum* for their respective and collective faults that are the direct and immediate cause of the significant legally-cognizable compensable economic (pecuniary) injury respectively suffered by the Applicant and Class Members;

122. If all Defendants are found to have committed extracontractual faults, they are solidarily liable by operation of arts. 1480 and 1526 C.C.Q.;

123. If Defendants TD and CIBC are found to have committed extracontractual faults and Defendant Aeroplan is found to have committed contractual faults, the Defendants' liability is *in solidum*. The same is true if TD and CIBC are found to have committed contractual faults and Defendant Aeroplan is found to have committed extracontractual faults;<sup>10</sup>

124. Under either theory (solidary liability or *in solidum*), the Defendants' faults and unlawful conduct are inextricably intertwined and have contributed to at least a common or single monetary (pecuniary) injury. In particular:

- Defendants TD and Aeroplan, and Defendants CIBC and Aeroplan, enticed the Applicant and Class Members to sign up for a Aeroplan credit card by offering Welcome Bonus Points upon qualifying;
- Aeroplan did not have a system or mechanism in place to ensure that TD and CIBC are apprised that applicants for a second Aeroplan credit card are

<sup>10</sup> See e.g., *Montréal (Ville) v. Lonardi*, [2018 SCC 29](#), at para. 85, citing *Gilles E. Néron Communication Marketing Inc. v. Chambre des notaires du Québec*, [2004 SCC 53](#), at para. 79.



ineligible for Welcome Bonus Points from the moment they collect applicants' Aeroplan account numbers (and prior to the Applicant and Class Members submitting their application);

- TD and CIBC did not have a system or other mechanism in place to verify whether the Applicant and Class Members were eligible for Welcome Bonus Points upon collecting the Applicant and Class Members' Aeroplan account numbers at the time they applied for their second Aeroplan credit cards;
  - TD and CIBC did not inform the Applicant and Class Members that they were ineligible for Welcome Bonus Points upon signing up for a second TD or CIBC Aeroplan Visa credit card;
  - Aeroplan did not verify whether Aeroplan account holders who applied for a second Aeroplan credit card with TD or CIBC were eligible for Welcome Bonus Points;
  - TD and CIBC collected annual fees, interest, and other fees from the Applicant and Class Members related to their second Aeroplan Visa credit card, as well as merchant interchange fees from their purchases;
  - Aeroplan derived profits from percentages of annual fees, interest, and other amounts charged to the Applicant and Class Members by TD and CIBC in relation to their second Aeroplan Visa credit card, as well as merchant interchange fees from their purchases;
  - Without warning, Aeroplan exercised its contractual discretion under Section 10 of the Aeroplan Program and Terms and Conditions in an unreasonable, excessive, arbitrary, and injurious manner – and therefore contrary to its obligation of good faith – by clawing back the Welcome Bonus Points given to the Applicant and Class Members up to two years after being approved for their second Aeroplan credit card;
125. While this is not a condition precedent to solidary liability or liability *in solidum*, it should nevertheless be emphasized that TD and Aeroplan's - and CIBC and Aeroplan's - predominant purpose in engaging in the above conduct was to increase their profits by causing injury to the Applicant and Class Members;

vii. Other Litigation Involving the Aeroplan Program

126. A parallel national class action (excluding Quebec residents) concerning the Defendants Aeroplan, TD, and CIBC's scheme of enticing Aeroplan account holders to sign up for new Aeroplan credit cards, failing to disclose their ineligibility for Welcome Bonus Points, and subsequently clawing back said Bonus Points has



been instituted in Ontario. The Statement of Claim in *Hynes v. Aeroplan Inc., et al.* CV-24-00097812-00CP is attached herein as **Exhibit R-6**;<sup>11</sup>

## II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

127. The Applicant is the holder of a CIBC Aeroplan Visa Infinite credit card and formerly the holder of a TD Aeroplan Visa Infinite credit card;
128. Sometime in 2022, the Applicant became a holder of a TD Aeroplan Visa Infinite credit card and was awarded 10,000 Welcome Bonus Aeroplan points. In March 2024, the Applicant cancelled her TD Aeroplan Visa Infinite credit card;
129. In April 2024, the Applicant became a customer of a CIBC Aeroplan Visa Infinite credit card and was awarded 10,000 Welcome Bonus Aeroplan points;
130. On October 28, 2024, the Applicant saw her 10,000 Aeroplan points clawed back from her Aeroplan account in relation to her CIBC Aeroplan Visa Infinite credit card. The notation on her Aeroplan account read as “Aeroplan Welcome Bonus Adjustment”;

OCT 28 2024	CIBC Aeroplan Visa Infinite AEROPLAN WELCOME BONUS ADJUSTMENT, Points debited (product return or reward adjustment)	- 10,000 pts ^
Points details		
	Base	-10,000 pts
Status Qualifying Currencies ⓘ		
	Everyday Status Qualification	0 EDQ

131. The Applicant also received the following email from Aeroplan:

Thank you for being an Aeroplan Credit Cardholder. As you know, Section 10 of the Aeroplan Terms and Conditions states that Welcome Bonuses along with other bonuses, incentives and accelerators may be offered by Aeroplan and its financial institution partners as an incentive for a Member to become a holder of an Aeroplan Credit Card where that Member is neither currently, nor was previously, a holder of that type of Aeroplan Credit Card, regardless of issuing bank. In addition, the provisions provide that Aeroplan may, in its sole discretion, choose to limit the number of New Card Bonuses (including Welcome Bonuses) that

<sup>11</sup> Note that the class action in *Hynes* was also filed by Consumer Law Group. A forum selection clause contained in the Aeroplan Program Terms and Conditions (Exhibit R-5) made it necessary to file a separate class action in Quebec limited to Quebec residents (see Clause “18. Governing Law and Dispute Resolution”). Note that the forum selection clause confirms that Quebec law governs the present proposed class action.

a Member may receive in any period, and describes the remedies available to Aeroplan if a Member violates these terms. As you have received more than the permitted number of New Card Bonuses for the same type of Aeroplan Credit Card, you are in violation of these provisions. As a gesture of goodwill, we will permit you to retain the additional bonus points earned as a result of the use of your Aeroplan Credit Card but will not permit you to retain the Welcome Bonus of the Aeroplan Credit Card. Accordingly, we have, pursuant to the Aeroplan Terms and Conditions, revoked the Aeroplan Points received by you in your Account from the excess Welcome Bonuses. We remind you that as a member of the Aeroplan Program, you are obliged to comply with the Aeroplan Program Terms and Conditions and to maintain your account in good standing. Please review these carefully and ensure that you comply with these Terms and Conditions at all times.

132. The Applicant called Aeroplan to obtain more information but she was once again directed to the Aeroplan Program Terms and Conditions. In particular, the Applicant highlighted that the Terms and Conditions did not prevent being granted for Welcome Bonus Points for signing up for two Aeroplan Visa credit cards, but was informed by Aeroplan that the Terms and Conditions had been retroactively amended to prohibit this, first on October 22, 2022 (effective December 19, 2022) and then on November 29, 2023 (effective February 5, 2024);
133. As a result, Welcome Bonus points acquired by the Applicant after those dates were clawed back even if the Welcome Bonus Points she was given for the TD Aeroplan Visa Infinite were acquired prior to those changes;
134. The Applicant provided his Aeroplan account number at the time he applied for both the CIBC and TD Aeroplan Visa credit card. However, neither CIBC nor TD never notified the Applicant that she was or may be ineligible for Welcome Bonus Points upon qualifying for the Aeroplan Visa credit cards due to her having been given Welcome Bonus Points after previously applying and qualifying for an Aeroplan credit card;
135. Had the Applicant been made aware that she was not eligible for Welcome Bonus Points, she would not have applied for the CIBC Aeroplan Visa credit cards, nor accepted them, let alone made successive purchases or paid the annual credit card fees;
136. The Applicant's injuries are a direct and immediate result of the Defendants' conduct;
137. The Defendants are therefore liable to compensate the Applicant;
138. After having had the Welcome Bonus Points associated with her CIBC and TD Aeroplan Visa credit cards clawed back, the Applicant conducted research on this



issue and discovered that upwards of 17,000 other Aeroplan credit cardholders are likely to have been similarly impacted and had Welcome Bonus Points clawed back from their Aeroplan account;

### **III. FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY EACH OF THE MEMBERS OF THE CLASS**

139. Every member of the Class is a resident of Quebec who had Welcome Bonus Points unilaterally clawed back without warning by Defendant Aeroplan on the asserted basis that Class Members were ineligible to receive after signing up and being approved for a second TD or CIBC Aeroplan Visa credit card;
140. Every Class Members incurred monetary (pecuniary damages) in the form of annual fees, interest, and/or other charges and fees associated with their second TD or CIBC Aeroplan Visa credit card, in addition to the 10,000 or more Welcome Bonus Points clawed back by Aeroplan (with 10,000 bonus points having a monetary value of 200\$).
141. None of the Class Members would not have incurred these monetary (pecuniary) injuries had they been informed by TD or CIBC at the time of applying for a second TD or CIBC Aeroplan Visa credit card that they were not eligible for Welcome Bonus Points upon being approved for said credit card;
142. All damages suffered by Class Members are the immediate and direct proximate result of the Defendants' conduct;

### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

- A) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings
143. The Applicant is unaware of the specific number of persons in resident in Quebec but has conducted research on the Internet leading to the discovery of sources estimating that at least 17,000 Aeroplan account holders have had Welcome Bonus Points clawed back by Defendant Aeroplan;
144. Based on the thousands of individuals who have contacted Consumer Law Group with respect to this class action, Class Members are numerous and scattered across the entire province;
145. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants;
146. Even if the Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system;



147. Also, a multitude of individual actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks resulting in contradictory judgments on questions of fact and law that are similar or related to all members of the Class;
  148. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them in one action;
  149. In these circumstances, a class action is the only appropriate procedural vehicle for all of the members of the Class to effectively pursue their respective rights and have access to justice;
  150. The authorization of this class action will also serve the convenience of witnesses and promote the just and efficient conduct of the proceedings, including by providing an opportunity to substantially streamline pretrial proceedings, reduce duplicative discovery and conflicting pretrial obligations, as well as prevent inconsistent rulings on evidentiary challenges, personal jurisdiction of one or more Defendants and other pretrial motions;
  151. The efficiency and economies of scale to be realized by certifying the proposed class promotes proportionality, the effective husbanding of judicial resources and, ultimately, access to justice as one of the cardinal values and objectives of the Canadian legal system;
- B) The claims of the members of the Class raise identical, similar or related issues of law or fact
152. Individual issues, if any, pale by comparison to the numerous common issues that are central to the outcome of the litigation;
  153. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' misconduct;
  154. The Members' claims raise identical, similar or related issues of fact, law, or mixed fact and law:
    - a. Did the Defendant Aeroplan rescind or claw back Welcome Bonus Points from Plaintiff and Class Members?
    - b. Did the Defendants Aeroplan, TD, and CIBC entice Plaintiff and Class Members to apply for Aeroplan credit cards under the promise of Welcome Bonus Points being given to them simply for applying and being approved for the relevant card?



- c. Did the Defendants TD and CIBC omit or otherwise fail to disclose to Plaintiff and Class Members that they were ineligible for Welcome Bonus Points upon qualifying for a second TD or CIBC Aeroplan credit card?
- d. Did the Defendants TD and CIBC violate the duty to inform flowing from the obligation of good faith applying at the contract formation stage by omitting or otherwise failing to disclose to Plaintiff and Class Members that they were ineligible for Welcome Bonus Points upon qualifying for a second TD or CIBC Aeroplan credit card?
- e. Is the fact that Aeroplan credit card holders may be ineligible for Welcome Bonus Points upon applying for a second TD or CIBC Aeroplan card material to reasonable consumers?
- f. Were the Defendants TD and CIBC negligent in failing to have a system or other mechanism in place to verify whether Plaintiff and Class Members were eligible for Welcome Bonus Points upon collecting Plaintiff and Class Members' Aeroplan account numbers at the time they applied for their second Aeroplan credit cards?
- g. Were the Defendants TD and CIBC negligent in omitting or otherwise failing to disclose to Plaintiff and Class Members that they may be ineligible for Welcome Bonus Points upon applying for a second TD or CIBC Aeroplan credit card?
- h. Was the Defendant Aeroplan negligent in failing to verify whether Aeroplan account holders who applied for a second Aeroplan credit card with TD or CIBC were eligible for Welcome Bonus Points and/or in failing to have a system or mechanism in place to ensure that TD and CIBC are apprised that applicants for a second Aeroplan credit card are ineligible for Welcome Bonus Points from the moment they collect applicants' Aeroplan account numbers?
- i. Did the Defendants TD and CIBC violate the duty to inform flowing from the general obligation of contractual good faith by failing to disclose to Plaintiff and Class Members that they may be ineligible for Welcome Bonus Points upon signing up for a second TD or CIBC Aeroplan credit card?
- j. Does the duty of contractual good faith prevent the Defendant Aeroplan from relying on Article 10 of the Aeroplan program general Terms and Conditions in seeking to justify clawing back the Welcome Bonus Points from Plaintiff and Class Members?
- k. Did Defendant Aeroplan breach the duty of honest contractual performance and/or exercise its contractual discretion unreasonably and in bad faith in invoking Article 10 to retroactively claw back the Welcome Bonus Points from Plaintiff and Class Members?



- l. Were the Defendants TD and CIBC's omissions to disclose to Plaintiff and Class Members that they may be ineligible for Welcome Bonus Points upon applying for a second TD or CIBC Aeroplan credit card deceptive to reasonable consumers?
- m. Did the Defendants TD and CIBC violate the *Consumer Protection Act* in omitting or failing to disclose to Plaintiff and Class Members that they may be ineligible for Welcome Bonus Points upon applying for a second TD or CIBC Aeroplan credit card?
- n. Did Defendants TD, CIBC, and Aeroplan become unjustly enriched at Plaintiff and Class Members' expense as a result of the above-listed conduct?
- o. Did Plaintiff and Class Members incur economic loss?
- p. What is the nature of the relief to which Plaintiff and Class Members are entitled?
- q. Are Defendants TD and Aeroplan, and CIBC and Aeroplan solidarily liable or liable *in solidum* to compensate Plaintiff and Class Members?
- r. Should the damages awarded to Plaintiff and Class Members include both the amount of profit individually and collectively realized by Aeroplan, TD and CIBC as a result of their breaches of their duty of good faith and/or negligence?
- s. Should an order for specific performance under art. 1601 C.C.Q. be issued against the Defendant Aeroplan enjoining it to restore to Plaintiff and Class Members the Welcome Bonus Points that were clawed back from them on the asserted rationale that Plaintiff and Class Members were ineligible to receive them?
- t. Should injunctive relief be issued against the Defendant Aeroplan enjoining it to implement measures to instantly become apprised of any new application for Aeroplan credit cards via TD and CIBC and to instantly notify TD and CIBC whether an applicant for a second Aeroplan credit card is ineligible for Welcome Bonus Points?
- u. Should injunctive relief be issued against the Defendant TD and CIBC enjoining them to verify and inform prospective Aeroplan credit card applicants at the application stage whether they are eligible for Welcome Bonus Points?
- v. Should the Defendants be condemned to pay compensatory damages? And if so, in what amount?



w. Should the Defendants be condemned to pay punitive damages? And if so, in what amount?

155. The interests of justice favour that this application be granted in accordance with its conclusions;

**V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

156. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and injunctive relief;

157. The conclusions the Applicant seeks by way of the present application to institute proceedings are as follows:

GRANT the class action of the Applicant and each of the Class Members;

DECLARE the Defendants solidarily liable or liable *in solidum* for the damages suffered by the Applicant and Class Members;

CONDEMN the Defendants to pay to each Class Member a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

ORDER Defendant Aeroplan to restore to Applicant and Class Members the Welcome Bonus Points that were clawed back from them on the asserted rationale that Plaintiff and Class Members were ineligible to receive them;

ORDER Defendant to implement measures to instantly become apprised of any new application for Aeroplan credit cards via TD and CIBC and to instantly notify TD and CIBC whether an applicant for a second Aeroplan credit card is ineligible for Welcome Bonus Points;

CONDEMN the Defendants to pay to each of the members of the Class punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;





CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

A) The Applicant requests that she be designated as representative of the Class

158. The Applicant is a member of the Class;
159. The Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that she wishes to represent and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
160. The Applicant has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
161. The Applicant has mandated the undersigned attorneys to obtain all relevant information with respect to the present action and intend to keep informed of all developments;
162. The Applicant, with the assistance of said attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;
163. The Applicant has given instructions to the undersigned attorneys to put information about this class action on their website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;
164. The Applicant is in good faith and have instituted this action for the sole goal of having their rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a direct and immediate consequence of the Defendants' conduct;
165. The Applicant understand the nature of the action;
166. The Applicant's interests are not antagonistic or otherwise adverse to those of other members of the Class;
167. The Applicant is prepared to be examined out-of-court on her allegations, as may be authorized by the Court, and to be present for Court hearings, as may be required and necessary;



168. The Applicant has spent time researching this issue on the internet and meeting with the undersigned attorneys to prepare this file. In so doing, she is convinced that the problem is widespread;
- B) The Applicant suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal
169. Defendant Aeroplan Inc.'s head office is located in the judicial district of Montreal;
170. A great number of the members of the Class sustained injuries and reside in the judicial district of Montreal;
171. The Applicant's attorneys practice their profession in the judicial district of Montreal;
172. The present application is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an application to institute proceedings in damages and injunctive relief;

**APPOINT** the Applicant as representative of the persons included in the Class herein described as:

- All persons resident in Quebec who are holders of a CIBC or TD Aeroplan credit card and who had Welcome Bonus Points clawed back based on having been issued a second Aeroplan credit card;

**IDENTIFY** the principal issues of fact and law to be treated collectively as the following:

- a. Did the Defendant Aeroplan rescind or claw back Welcome Bonus Points from Plaintiff and Class Members?
- b. Did the Defendants Aeroplan, TD, and CIBC entice Plaintiff and Class Members to apply for Aeroplan credit cards under the promise of Welcome Bonus Points being given to them simply for applying and being approved for the relevant card?
- c. Did the Defendants TD and CIBC omit or otherwise fail to disclose to Plaintiff and Class Members that they were ineligible for Welcome Bonus Points upon qualifying for a second TD or CIBC Aeroplan credit card?
- d. Did the Defendants TD and CIBC violate the duty to inform flowing from the obligation of good faith applying at the contract formation stage by



omitting or otherwise failing to disclose to Plaintiff and Class Members that they were ineligible for Welcome Bonus Points upon qualifying for a second TD or CIBC Aeroplan credit card?

- e. Is the fact that Aeroplan credit card holders may be ineligible for Welcome Bonus Points upon applying for a second TD or CIBC Aeroplan card material to reasonable consumers?
- f. Were the Defendants TD and CIBC negligent in failing to have a system or other mechanism in place to verify whether Plaintiff and Class Members were eligible for Welcome Bonus Points upon collecting Plaintiff and Class Members' Aeroplan account numbers at the time they applied for their second Aeroplan credit cards?
- g. Were the Defendants TD and CIBC negligent in omitting or otherwise failing to disclose to Plaintiff and Class Members that they may be ineligible for Welcome Bonus Points upon applying for a second TD or CIBC Aeroplan credit card?
- h. Was the Defendant Aeroplan negligent in failing to verify whether Aeroplan account holders who applied for a second Aeroplan credit card with TD or CIBC were eligible for Welcome Bonus Points and/or in failing to have a system or mechanism in place to ensure that TD and CIBC are apprised that applicants for a second Aeroplan credit card are ineligible for Welcome Bonus Points from the moment they collect applicants' Aeroplan account numbers?
- i. Did the Defendants TD and CIBC violate the duty to inform flowing from the general obligation of contractual good faith by failing to disclose to Plaintiff and Class Members that they may be ineligible for Welcome Bonus Points upon signing up for a second TD or CIBC Aeroplan credit card?
- j. Does the duty of contractual good faith prevent the Defendant Aeroplan from relying on Article 10 of the Aeroplan program general Terms and Conditions in seeking to justify clawing back the Welcome Bonus Points from Plaintiff and Class Members?
- k. Did Defendant Aeroplan breach the duty of honest contractual performance and/or exercise its contractual discretion unreasonably and in bad faith in invoking Article 10 to retroactively claw back the Welcome Bonus Points from Plaintiff and Class Members?
- l. Were the Defendants TD and CIBC's omissions to disclose to Plaintiff and Class Members that they may be ineligible for Welcome Bonus Points upon applying for a second TD or CIBC Aeroplan credit card deceptive to reasonable consumers?



- m. Did the Defendants TD and CIBC violate the *Consumer Protection Act* in omitting or failing to disclose to Plaintiff and Class Members that they may be ineligible for Welcome Bonus Points upon applying for a second TD or CIBC Aeroplan credit card?
- n. Did Defendants TD, CIBC, and Aeroplan become unjustly enriched at Plaintiff and Class Members' expense as a result of the above-listed conduct?
- o. Did Plaintiff and Class Members incur economic loss?
- p. What is the nature of the relief to which Plaintiff and Class Members are entitled?
- q. Are Defendants TD and Aeroplan, and CIBC and Aeroplan solidarily liable or liable *in solidum* to compensate Plaintiff and Class Members?
- r. Should the damages awarded to Plaintiff and Class Members include both the amount of profit individually and collectively realized by Aeroplan, TD and CIBC as a result of their breaches of their duty of good faith and/or negligence?
- s. Should an order for specific performance under art. 1601 C.C.Q. be issued against the Defendant Aeroplan enjoining it to restore to Plaintiff and Class Members the Welcome Bonus Points that were clawed back from them on the asserted rationale that Plaintiff and Class Members were ineligible to receive them?
- t. Should injunctive relief be issued against the Defendant Aeroplan enjoining it to implement measures to instantly become apprised of any new application for Aeroplan credit cards via TD and CIBC and to instantly notify TD and CIBC whether an applicant for a second Aeroplan credit card is ineligible for Welcome Bonus Points?
- u. Should injunctive relief be issued against the Defendant TD and CIBC enjoining them to verify and inform prospective Aeroplan credit card applicants at the application stage whether they are eligible for Welcome Bonus Points?
- v. Should the Defendants be condemned to pay compensatory damages? And if so, in what amount?
- w. Should the Defendants be condemned to pay punitive damages? And if so, in what amount?



**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Applicant and each of the Class Members;

DECLARE the Defendants solidarily liable or liable *in solidum* for the damages suffered by the Applicant and Class Members;

CONDEMN the Defendants to pay to each Class Member a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

ORDER Defendant Aeroplan to restore to Applicant and Class Members the Welcome Bonus Points that were clawed back from them on the asserted rationale that Plaintiff and Class Members were ineligible to receive them;

ORDER Defendant to implement measures to instantly become apprised of any new application for Aeroplan credit cards via TD and CIBC and to instantly notify TD and CIBC whether an applicant for a second Aeroplan credit card is ineligible for Welcome Bonus Points;

CONDEMN the Defendants to pay to each of the members of the Class punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

**DECLARE** that all Class Members that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Class Members, date upon which Class Members that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in La Presse and the Montreal Gazette;

**ORDER** that said notice be available on the Defendants' websites, Facebook page(s), X accounts, and Instagram accounts with a link providing "Notice to AEROPLAN Visa Credit Card Holders";

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

**THE WHOLE** with costs, including all publication and dissemination fees.

Montreal, November 20, 2024



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CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Applicant

**CONSUMER LAW GROUP INC.**

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